



September 12, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Notice of Ex Parte Communication, CS Docket No. 97-80, MB Docket Nos. 16-42, 16-41

Dear Ms. Dortch:

On September 8, 2016, Alison Neplokh, Erin Dozier, Patrick McFadden and the undersigned, all of the National Association of Broadcasters (NAB), had separate meetings with Jessica Almond of Chairman Wheeler's office, David Grossman of Commissioner Clyburn's office, Marc Paul of Commissioner Rosenworcel's office, Matthew Berry of Commissioner Pai's office, and Robin Colwell of Commissioner O'Rielly's office.

In these meetings, NAB reiterated its concerns regarding the Commission's proposed licensing scheme in the set-top-box proceeding. Consistent with its recent ex parte communication on the same subject,<sup>1</sup> NAB cannot support any order that permits the Commission – let alone Commission staff – to substantively alter broadcasters' privately negotiated agreements concerning the use of their content or the application of those agreements to third-party set-top-box licensees. Such an approach would fatally undermine the Commission's stated goal of protecting content and respecting copyright and contracts.

NAB also stated that the Commission should reject the request of the American Cable Association (ACA) that any modified rules adopted in this proceeding exempt all operators that serve fewer than 1 million subscribers.<sup>2</sup> ACA grossly overstates the costs and complexity of implementing the Commission's proposals. Once again, ACA is playing the part of Chicken Little with the Commission, ever at the ready to cry, "The sky is falling!" Any exemption should be confined to analog cable systems.

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<sup>1</sup> Letter from Rick Kaplan to Marlene H. Dortch, CS Docket No. 97-80, MB Docket No. 16-42 (Sept. 2, 2016).

<sup>2</sup> Letter from Thomas Cohen to Marlene H. Dortch, MB Docket Nos. 97-80, 16-42 (Aug. 25, 2016).

NAB also continues to be deeply troubled by ACA's recent request that the Commission restrict bundling by programmers. ACA's remarkably unsubtle request, urging the Commission to restrict programming negotiations involving "urban-interest" or "Spanish language" channels, should immediately raise red flags.<sup>3</sup> ACA's request to have the FCC institute a new rule so that cable operators can freely discriminate amongst programming based on race and language is antithetical to the values underlying the Communications Act and to common decency. The Commission should be promoting a diverse marketplace available to all Americans, not a segregated one.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal line extending from the end of the signature.

Rick Kaplan  
General Counsel and Executive Vice President,  
Legal and Regulatory Affairs  
National Association of Broadcasters

cc: Jessica Almond  
David Grossman  
Marc Paul  
Matthew Berry  
Robin Colwell

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<sup>3</sup> Letter from Michael Nilsson and Ross Lieberman to Marlene H. Dortch, MB Docket No. 16-41 (Aug. 26, 2016).